

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8890 OF 2019

**RAJESHWAR PRABHAKAR BOTLAWAR
VERSUS
KU. SWATI PRABHAKAR BOTLAWAR AND OTHERS**

...
Advocate for Petitioner : Mrs. Smita S. Kulkarni
Advocate for Respondent No.1 : Mr. Vinod P. Patil
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 11th JULY, 2022

PER COURT :

1. The petitioner by this petition filed under Article 227 of the Constitution of India, challenges the order passed by the learned Joint Civil Judge Senior Division, Nanded below Exhibit-40 in Special Civil Suit No.05/2018.

2. The suit is filed by respondent No.1 for partition and separate possession of the ancestral property. Petitioner is the real brother of respondent No.1. Both of them are fighting for the property of their father. During the course of the suit, respondent No.1 filed application Exhibit-40, contending that she has no source of income and the petitioner is irregularly paying an amount of Rs.5,000/- per month, which is not sufficient for her maintenance. It is also contended that the petitioner has sufficient income which he has received after death of his father. She, therefore, sought

maintenance of Rs.25,000/- per month. The said application was opposed by the petitioner. However, the trial Court has awarded maintenance at the rate of Rs.10,000/- per month from the date of application. The petitioner is aggrieved by this order.

3. Heard the learned advocate for petitioner and the learned advocate for respondent No.1. Perused the documents placed on record.

4. It is a matter of record that respondent No.1 has filed suit for partition, wherein in Schedule-A description of movable properties is given. As per the said description fixed deposit receipts and total amount in the saving account in the name of the father and brother i.e. petitioner stands at Rs.83,26,858/-. Schedule-B pertains to the immovable property. The valuation of which is stated to be Rs.87,22,902/-.

5. The learned advocate for petitioner has vehemently submitted that respondent No.1 has admitted in her affidavit-in-reply that she is getting rent from the Godown. Perusal of the affidavit-in-reply reveals that respondent No.1 was getting rent of Rs.6,500/- per month from the Godown leased out by her. The lease period was upto January, 2021 and thereafter she is not

getting any amount towards lease rent. Account statement submitted by respondent No.1 along with her affidavit-in-reply shows that only for three to four months, she has received the rent and not thereafter. The learned advocate for respondent No.1 further submits that respondent No.1 has already issued notice to the lessee, terminating the lease and for handing over the possession and claiming the arrears of rent.

6. Taking into consideration the fact that amount of Rs.83,26,858/- is lying in the bank either in the name of petitioner or in his father's name, this Court is of the considered view that the trial Court was justified in directing the petitioner to pay maintenance at the rate of Rs.10,000/- per month to respondent No.1.

7. There is no illegality or perversity in the order impugned in the present petition. The writ petition being devoid of merits, is dismissed.

8. By way of interim order this Court had directed the petitioner to deposit amount of Rs.7,500/- per month, which the petitioner is stated to have deposited. The petitioner shall deposit the total arrears of remaining amount of Rs.2,500/- per month before the trial Court within a period of two months from the date

of receipt of this order.

9. Taking into consideration that the suit is of the year 2018, the trial court to expedite the hearing and decide the suit, in any case, within a period of one year from today.

(NITIN B. SURYAWANSHI, J.)

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